

**REMARKS**

Upon entry of this amendment, claims 1-23 are all the claims pending in the application. By this Amendment, Applicant amends claims 1-16. Claims 1-16 have been amended solely for the purpose of improved readability. Since such amendments are made to correct minor, basic elements, Applicant respectfully submits that that they do not narrow the scope of the claims and do not raise any Festo implications.

In addition, Applicant adds claims 17-23. Claims 17-23 are clearly supported throughout the specification, for example see Specification pages 3-5 and Figures 1 and 2.

**I. Preliminary Remarks**

Applicant thanks the Examiner for acknowledging the claim to foreign priority and for confirming that the certified copy of the priority document was received. In addition, Applicant thanks the Examiner for initialing the references listed on form PTO-1449 submitted with the Information Disclosure Statement filed on June 7, 2000.

The Examiner asserts that the oath or declaration filed on June 7, 2000 is defective because the application number and the filing date of the specification are not filled out in the Declaration (see page 2 of the Office Action). However, Applicant respectfully disagrees with the Examiner and submits that the oath sufficiently identifies the Application.

With respect to identification of an Application, MPEP § 602 requires the following:

**"[t]he following combination of information  
supplied in an oath or declaration filed on  
the application filing date with a  
specification are acceptable as minimums for**

identifying a specification and compliance with any one of the items below will be accepted as complying with the identification requirement of 37 CFR 1.63:

(A) name of inventor(s), and reference to an attached specification which is both attached to the oath or declaration at the time of execution and submitted with the oath or declaration on filing;

(B) name of inventor(s), and attorney docket number which was on the specification as filed; or

**(C) name of inventor(s), and title of the invention which was on the specification as filed**, emphasis added. See MPEP § 602, page 600-29.

In the present matter, on June 7, 2000, Applicant filed a Declaration together with the Specification. In addition, the title of the Application "Time Management of Information Distributed on K-Bytes in SDH Frames" appears in both the Declaration and the Specification, as originally filed. As a result, the Declaration sufficiently identifies the Application by reciting the title of the invention. Therefore, Applicant respectfully submits that the Declaration is not defective as asserted by the Examiner.

## **II. Summary of the Office Action**

The Examiner rejected claims 1-6 and 16 under 35 U.S.C. § 101 and claims 1-15 under 35 U.S.C. § 112, second paragraph. Applicant respectfully traverses the rejections in view of the following comments.

## **III. Claim Rejections under 35 U.S.C. § 101**

Claims 1-6 and 16 stand and rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter (see page 2-3 of the Office Action). Specifically, the Examiner asserts

that claims 1-6 and 16 are directed to merely conveying results of the calculations. For support the Examiner cites Water, Bension and Flook. Applicant respectfully disagrees with the Examiner and respectfully requests the Examiner to reconsider and withdraw this rejection.

A transmission frame is not really a mere post solution activity or a preliminary data gathering step, but actually a manufacture,<sup>1</sup> just like an electronic envelope. As a manufacture, the transmission frame is statutory under 35 U.S.C. § 101. In general, the transmission frame is comprised of Section Overhead containing management information and information payload containing the informative part. The Section Overhead comprises of bits identifying the destination node, bits identifying source node, source node IDentification Extension bit, destination node IDentification Extension bit and bits identifying a change of information. The transmission frame may be best understood by thinking of it as an electronic envelope, with the structural features being carried out not by panels of paper but by bits and bytes with particular functions.

A physical paper envelope is distinct from the letter it carries, and also is distinct from the addressing information it bears. Suppose a new kind of envelope has a clever feature that permits one to know how long it has been since the envelope was sealed. Such an envelope

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<sup>1</sup> *see* MPEP § 2106.01 (manufacture is the production of articles for use from raw or prepared materials by giving these materials new forms, qualities, properties, or combination, whether by hand labor or by machinery”).

might be claimed as an envelope with an interior part for holding a letter, an outside face for bearing an address, and the foregoing special feature incorporated into the flap or wherever.

Such an envelope is clearly a manufacture and unquestionably qualifies as statutory subject matter under 35 U.S.C. § 101. The envelope is a manufacture, with structural features, and is not a data structure. It does not do anything to the address or to the letters inside; no manipulation of that data occurs. The envelope just bears the address and just holds the contents; it does not interact with those items. To put it another way, the envelope behaves the same no matter who the addressee is.

The claimed transmission frame is really just like an electronic envelope. It is a manufacture. It has a certain arrangement of bits (section overhead), and these bits are the structural features of the transmission frame, and the structural bits have a function. The bits are like the structural features of the physical envelope. The whole purpose of the physical envelope is to carry the letter. The whole purpose of the transmission frame is to carry information payload. The physical envelope performs its job of carrying the letter by virtue of its structural features: front and back panels, flap. The transmission frame performs its job of carrying information by virtue of its structural features: a section overhead with bits identifying the destination node, bits identifying source node, source node IDentification Extension bit, destination node IDentification Extension bit and bits identifying a change of information.

Just as the physical envelope does not interact with the address it bears or the letters it carries (and is thus not a data structure), the transmission frame does not interact with the information payload it carries and does not describe anything. There is no logical or physical

relationship between the structural bits of the transmission frame (the section overhead) and the information payload. The transmission frame behaves the same no matter how the information payload is set and what it contains. Therefore, the claim does not recite this information payload because just like the letter is not important to the structure of the envelope, similarly, informational payload is not important to the structure of the frame (section overhead).

The fact that the transmission frame carries information payload is no more relevant to the statutory nature of the claim than the fact that a physical envelope carries a letter inside or has an address on the outside. The transmission frame thus cannot reasonably be said to fall within the definition of mere post-solution or data gathering activity, and is not a mere number.

The transmission frame is clearly just a manufacture, just like the imaginary inventive envelope mentioned above. Both manufactures have a certain well-defined structure, and both manufactures are valuable because of that particular structure. A manufacture is explicitly statutory subject matter under 35 U.S.C. § 101.

Although a transmission frame and an envelope are both manufactures, a difference between them is that an envelope is tangible, and a transmission frame is not. The statute, however, *does not include requirements as to the manufacture being tangible, visible, or even detectable.* Suppose a new beneficial chemical is discovered which exists only as a gas under normal conditions. The chemical could be detected with a microscope or some other test apparatus. The chemical would unquestionably be statutory subject matter, and it would not be necessary to claim the chemical in combination with the microscope for obvious reasons. The transmission frame is similarly undetectable with the eye or hand, but can be detected with a

receiver or some other test apparatus. Even so, the transmission frame is a manufacture and thus unquestionably is statutory subject matter, and it is **not** necessary to claim the beneficial transmission frame in combination with an apparatus such as a receiver.

Since the claimed transmission frame falls within the statute 35 U.S.C. § 101, and since there is no exception (such as the exception for data structures *per se* or algorithms in the abstract) that justifies excluding the claimed invention, and since the frame is not just a mere numerical result, Applicant respectfully requests the Examiner to withdraw this rejection of claim 1 and its dependent claims 2-6, and independent claim 16.

**IV. Claim Rejections under 35 U.S.C. § 112**

Claims 1, 6-7, 11, 14 and 15 stand rejected under 35 U.S.C. § 112, second paragraph for containing minor errors. Applicant respectfully thanks the Examiner for pointing out, with particularity, the aspects of the claim thought to be indefinite. Applicant respectfully requests the Examiner to withdraw this rejection in view of the self-explanatory claim amendments being made herein.

**V. New Claims.**

In order to provide more varied protection, new claims 17-23 are added.

**VI. Conclusion and request for telephone interview.**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the

Amendment Under 37 C.F.R. § 1.111  
U.S. Application No.: 09/588,945

Attorney Docket No.: Q59243

Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly invited to contact the undersigned attorney at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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**23373**

CUSTOMER NUMBER

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